



Revised Guidance on Jail Removal and Separation Core Requirements

June 17, 2014

What?

- The Juvenile Justice and Delinquency Prevention Act (JJDP) statute requires a more expansive approach to the application of two of the four core requirements, jail removal and separation.
- Specifically, the jail removal and separation requirements apply not only to certain juveniles in secure custody, but also to those juveniles in nonsecure custody.

Why?

- Section 223(a)(12) of the JJDP provides, in part, that juveniles “will not be *detained or confined* in any institution in which they have contact with adult inmates.”
- Section 223(a)(13) provides, in part, that “no juvenile will be *detained or confined* in any jail or lockup for adults” (subject to certain exceptions).
- The plain meaning of “detain,” consistent with the Fourth Amendment of the U.S. Constitution means that the person allegedly detained was not free to leave.¹
- Conversely, if, in view of all the circumstances surrounding the incident, a reasonable person would believe that he *is* free to leave, he has not been detained.²
- This revised guidance means that OJJDP is moving from an understanding of “detained” or “confined” as being synonymous with “being in ‘secure custody’” to an understanding that detained or confined must, within the context of the statute, include juveniles detained in nonsecure custody.

¹ *E.g., United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

² *E.g., United States v. Bradley*, 923 F.2d 362, 365 (5th Cir. 1991).

When?

- OJJDP plans to phase in this requirement and wants to hear from you before deciding on a specific timeline.
- While States are asked to begin collecting and reporting on these data as soon as possible, OJJDP will be conducting listening sessions this fall to learn more about any concerns with collecting the data and how OJJDP can provide support with this phased-in approach.

How?

- The revised guidance represents a departure from the previous approach that will require changes in State practices.
- OJJDP's phased-in approach includes a series of listening sessions with state compliance monitors and juvenile justice specialists to understand the training, guidance and other resources needed to support the implementation of the revised guidance.
- OJJDP will issue more detailed guidance in the following months and provide formal training for states next year.
- In the meantime, please send any questions that you have in writing so that OJJDP can assist you in beginning to make the transition under the new guidance.

Please submit questions via email to:

JJDPACoreRequirementsFAQ@usdoj.gov